

Exhibit 46

<p style="text-align: center;">Page 205</p> <p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK -----x 18-CV-1599(WFK) PATRICK SAGET, ET AL., Plaintiffs, United States Courthouse Brooklyn, New York -against- January 8, 2019 9:30 a.m. UNITED STATES OF AMERICA, ET AL., Defendants. -----x</p> <p>TRANSCRIPT OF CIVIL CAUSE FOR BENCH TRIAL BEFORE THE HONORABLE WILLIAM F. KUNTZ, II UNITED STATES DISTRICT JUDGE</p> <p>APPEARANCES: Attorney for Plaintiffs: MAYER BROWN 71 South Wacker Chicago, Illinois BY: HOWARD ROIN, ESQ. LINDA SHI, ESQ. CHRISTOPHER KNIGHT, ESQ.</p> <p>KURZBAN KURZBAN WEINGER TETZELI & PRATT, P.A. 2650 SW 27th Avenue, Second Floor Miami, Florida 33133 BY: IRA J. KURZBAN, ESQ. KEVIN A. GREGG, ESQ.</p> <p>Court Reporter: Georgette K. Betts, RPR, FCRR, CCR Phone: (718)804-2777 Fax: (718)804-2795 Email: Georgetteb25@gmail.com</p>	<p style="text-align: center;">Page 206</p> <p>1 APPEARANCES: (Continued) 2 Attorney for Defendants: 3 4 UNITED STATES ATTORNEY'S OFFICE Eastern District of New York 271 Cadman Plaza East Brooklyn, New York 11201 5 BY: JOSEPH A. MARUTOLLO, AUSA 6 JAMES R. CHO, AUSA 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 Court Reporter: Georgette K. Betts, RPR, FCRR, CCR Phone: (718)804-2777 Fax: (718)804-2795 Email: Georgetteb25@gmail.com 23 24 Proceedings recorded by mechanical stenography. Transcript 25 produced by computer-aided transcription.</p>
<p style="text-align: center;">Page 207</p> <p>1 (In open court.) 2 THE COURTROOM DEPUTY: All rise. 3 The Honorable William F. Kuntz, II is now presiding. 4 Civil cause for the bench trial, Docket Number 18-CV-1559. 5 Saget, et al. versus Trump, et al. 6 Counsel, state your appearances for the record. 7 MR. KURZBAN: Ira Kurzban for the plaintiffs. 8 THE COURT: Would you spell your name, sir. State 9 your name and spell it. 10 MR. KURZBAN: I-R-A, first name. Last name, 11 Kurzban, K-U-R-Z-B-A-N. 12 THE COURT: Thank you. Ladies and gentlemen, as 13 well, you all may be seated as well. Thank you. 14 Counsel, please continue. 15 MR. GREGG: Kevin Gregg for plaintiffs, K-E-V-I-N, 16 G-R-E-G-G. 17 THE COURT: Thank you. You may be seated. 18 MR. KNIGHT: Christopher Knight for plaintiffs. 19 Christopher, C-H-R-I-S-T-O-P-H-E-R. Knight, K-N-I-G-H-T. 20 THE COURT: Thank you. Please be seated. 21 MS. SHI: Linda Shi for plaintiffs. L-I-N-D-A. 22 Last name Shi, S-H-I. 23 THE COURT: Thanks. Please be seated. 24 MR. ROIN: Good morning, Your Honor. 25 Howard Roin for plaintiffs, H-O-W-A-R-D, R-O-I-N.</p>	<p style="text-align: center;">Page 208</p> <p>1 THE COURT: Thank you, counsel. Please be seated. 2 MR. MARUTOLLO: Good morning, Your Honor. 3 Joseph Marutollo for the defendants, President 4 Donald Trump, United States of America, Department of Homeland 5 Security, Secretary Nielsen and Acting Secretary Grady. 6 THE COURT: Thank you. 7 MR. CHO: Good morning. 8 James Cho with the U.S. Attorney's Office. 9 THE COURT: Thank you. 10 MS. WATZ: Jessica Watz, paralegal specialist, U.S. 11 Attorney's Office. 12 THE COURT: Thank you. 13 MR. KIRSCHNER: Adam Kirschner, Department of 14 Justice. Adam, K-I-R-S-C-H-N-E-R. 15 THE COURT: Thank you. 16 MS. SHAH: Liza Shah with the Department of Homeland 17 Security. 18 THE COURT: I'm sorry. Could you keep your voice 19 up. I lost that. 20 MS. SHAH: Liza Shah with the Department of Homeland 21 Security. Good morning. 22 THE COURT: Thank you. 23 MS. VUONG: Sarah Vuong for the Department of 24 Homeland Security. 25 THE COURT: Thank you.</p>

<p style="text-align: right;">Page 209</p> <p>1 MS. VUONG: Sarah Vuong, V-U-O-N-G. 2 MS. AFANEH: Tahani Afaneh for the Department of 3 Homeland Security. 4 THE COURT: Thank you, please be seated. 5 All right. Thank you all for your patience. We're 6 still on the plaintiffs' case, please call your next witness. 7 MR. KURZBAN: Thank you, Your Honor. 8 May it please the Court. My name is Ira Kurzban and 9 our first witness, Your Honor, is Director Leon Rodriguez and 10 Mr. Rodriguez, can you please come up. 11 THE COURT: Please come forward and be sworn by the 12 Courtroom Deputy, sir. Please raise your right hand. 13 MR. KURZBAN: His name, for the record, Your Honor, 14 is spelled L-E-O-N, Rodriguez, R-O-D-R-I-G-U-E-Z. He's the 15 former Director to the United States Citizenship and 16 Immigration Services. 17 THE COURT: Thank you. 18 Please be seated, sir. When you reach the top step, 19 I'm going to ask you to maneuver this microphone right in 20 front of you. See it's live. 21 Just state your name again and spell it clearly for 22 the court reporter. It's like doing a sound check in a studio 23 and then counsel will inquire. So. 24 THE WITNESS: My name is Leon, L-E-O-N, Rodriguez, 25 R-O-D-R-I-G-U-E-Z.</p>	<p style="text-align: right;">Page 210</p> <p>1 THE COURT: Thank you, you may inquire, counsel. 2 MR. KURZBAN: Thank you, Your Honor. 3 (Witness sworn.) 4 LEON RODRIGUEZ, called as a witness, having been first duly 5 sworn/affirmed, was examined and testified as follows: 6 DIRECT EXAMINATION 7 BY MR. KURZBAN: 8 Q Director Rodriguez, what is your current employment? 9 A I am a partner at the law firm of Seyfarth Shaw. That's 10 S-E-Y-F-A-R-T-H, and Shaw, S-H-A-W. 11 Q And prior to your current employment, where were you 12 employed? 13 A I was -- from 2014 to 2017, I was the Director of United 14 States Citizenship and Immigration Services in the Department 15 of Homeland Security. 16 Q And how many years did you hold that position? 17 A For approximately two and a half years. 18 Q And were you involved in government service prior to that 19 position? 20 A I was. I held a number of government service positions 21 actually beginning here in the Brooklyn District Attorney's 22 Office in 1988. 23 Q Could you go through your government service, please. 24 A Sure. I started as an assistant district attorney in the 25 Kings County District Attorney's Office in 1988. I served</p>
<p style="text-align: right;">Page 211</p> <p>1 there until 1994. 2 During two years of that time, '91 to '93, I was 3 also a Special Assistant U.S. Attorney in the Eastern District 4 of New York here. 5 Then in 1994 I became a trial attorney in the Civil 6 Rights Division Criminal Section at the U.S. Department of 7 Justice. I served there from 1994 to 1997. 8 In 1997, I became an Assistant United States 9 Attorney in the Western District of Pennsylvania. 10 In 1998, I became the chief of the White Collar 11 Crime Section. 12 Then in 1999, I became the First Assistant United 13 States Attorney in Pittsburgh, and served in that capacity 14 until 2001. 15 I joined the law firm of Ober, Kaler, Grimes & 16 Shriner, and was a partner there from 2001 to 2007, in their 17 Washington, D.C. office. 18 In 2007, I was appointed as the county attorney for 19 Montgomery County, Maryland. I was also known, I guess, as a 20 county solicitor, and I served in that capacity from 2007 to 21 2010. 22 January 2010, at that time I became the Chief of 23 Staff and Deputy Assistant Attorney General for the Civil 24 Rights Division at the Department of Justice. I served there 25 for approximately 18 months, at which time I was appointed as</p>	<p style="text-align: right;">Page 212</p> <p>1 the Director of the Office for Civil Rights at the U.S. 2 Department of Health and Human Services. 3 And I was there until 2014 when I joined the 4 Department of Homeland Security. 5 Q And in the Department of Homeland Security at USCIS, I 6 assume you had a good deal of experience and knowledge about 7 immigration matters; is that correct? 8 A That is correct. With the U.S. Citizenship and 9 Immigration Services is the immigration benefited adjudicating 10 agency. So every immigration benefit is in some way 11 adjudicated through USCIS. Therefore, in that job and 12 actually through a number of my prior positions, I gained 13 extensive experience in immigration matters. 14 Q And can you explain to the Court what your 15 responsibilities were as the director of USCIS? 16 A I was responsible for all aspects of the agency's 17 operations, which included overseeing domestic adjudications, 18 naturalizations, refugee and asylum operations, humanitarian 19 operations, including, obviously, temporary protected status. 20 Overseeing the E-Verify and I9 systems. But also providing 21 advice to the Secretary of Homeland Security and to the 22 President on immigration matters. 23 Q Did it also include overseeing benefit applications such 24 as H-2A and H-2B applications? 25 A Yes, it did. Yes, it did. Although I should clarify</p>

<p style="text-align: center;">Page 213</p> <p>1 that with those benefits, as with other benefits, we had 2 coordinate responsibilities with other cabinet departments 3 such as the Department of State and Department of Labor, but I 4 did oversee USCIS's operations with respect to those benefits. 5 Q And H-2As involve temporary visas for agricultural 6 workers, correct? 7 A That is correct. 8 Q And H-2Bs involve temporary visas for non-agricultural 9 workers? 10 A That is correct. 11 Q Have you ever been an expert or designated as an expert 12 witness in immigration matters prior? 13 A I have served as a consulting expert. I've never been 14 designated or qualified as an expert in a courtroom 15 proceeding. But I have served as a consulting expert 16 previously. 17 Q In immigration matters? 18 A That is correct, specific to the EB-5 Immigrant Investor 19 Program. 20 Q And as you said as part of your responsibility, you 21 became familiar with temporary protected status? 22 A That is correct. During my service as director, we had a 23 small number of new temporary protected status designations 24 and even a larger number of decisions about extensions and/or 25 terminations of existing temporary protected status grants.</p>	<p style="text-align: center;">Page 214</p> <p>1 Q And can you explain to the Court what temporary protected 2 status is? 3 A Temporary protected status essentially amounts to the 4 suspension of deportation, and in most cases also the 5 extension of employment authorization for nationals of a 6 country who are in the United States, where that country has 7 been designated by the Secretary of Homeland Security as 8 qualifying for designation under temporary protected status 9 which means either that there has been some sort of a war, or 10 military event, or some sort of a civil disorder in that 11 country; that there has been a natural disaster such as a 12 hurricane or earthquake; or there are otherwise what are 13 labeled in the statute extraordinary and temporary conditions 14 in that country. And in each case, and I'm paraphrasing and 15 merging the three bases here, but in each case, essentially, 16 either the nationals of that country are unable to safely 17 return. There needs to be a finding that they are unable to 18 safely return to the country, and/or that the country is 19 unable to reabsorb its nationals who are abroad. 20 Q When you say reabsorb, does that, in some sense, depend 21 on the numbers of peoples involved? 22 A Naturally. You know, when you think about what's needed 23 for people to return to their country, there are a number of 24 conditions of public safety, national security, healthcare, 25 housing, education. There is a pretty long list. Conditions</p>
<p style="text-align: center;">Page 215</p> <p>1 that need to be met in order for those individuals to be able 2 to safely return to the country. 3 Q Now, the fact that the government of the United States 4 may grant temporary protected status to nationals of a 5 particular country, does that mean that the government cannot 6 deport other people from the same country? 7 A No, it doesn't mean that at all. In fact, it is not 8 uncommon that you will have one segment of the population, 9 foreign nationals from a particular country that is protected 10 from deportation under temporary protected status, and have 11 another, usually either later arriving or criminally involved 12 population from that same country who is not protected from 13 deportation. 14 TPS does not necessarily amount to a protection from 15 deportation, and from the consequence of return to the home 16 country for every single foreign national who is in the United 17 States. 18 Q And temporary protected status typically has a cut-off 19 date; is that right? 20 A It does. Basically you have two dates that you'll 21 usually enter into on a temporary protected status notice. 22 First of all, you'll have essentially a last date of 23 entry. In order to qualify for TPS, you need to have been in 24 the United States by a certain date designated in the TPS 25 Federal Register notice. Oftentimes, also there will be a</p>	<p style="text-align: center;">Page 216</p> <p>1 length of presence in the United States; a year, two years. 2 Just speaking hypothetically, you'll have a length of presence 3 in the United States which will also be a qualification in 4 that Federal Register notice in order to -- for those foreign 5 nationals to qualify for TPS. 6 Q And, Director Rodriguez, when you served as the director, 7 did you ever make or recommend any TPS -- strike that. 8 Were you ever involved in the TPS process? 9 A I was involved, roughly during my time as director, 10 somewhere between 12 and 15 TPS decisions came through my 11 office. And when I say decisions, it's basically my decision 12 as to what I recommend to the Secretary of Homeland Security 13 for the decision that he will actually make. The decision is 14 actually vested by statute with the Secretary of Homeland 15 Security. 16 Those decisions could be original designations. 17 They could be redesignations, meaning that -- generally, 18 meaning that the last date of entry was actually advanced to a 19 later date. They could be extensions. In other words, 20 affording another period of temporary protected status to the 21 nationals of a particular country, or termination, determining 22 that the conditions for temporary protected status no longer 23 apply to a particular country and terminating temporary 24 protected status on that basis. 25 Q And during your tenure as the director, you did make</p>

<p style="text-align: right;">Page 249</p> <p>1 really talking about not necessarily one single event and the 2 consequences of that single event, but it's talking about a 3 multiplicity, a potential multiplicity of conditions that may 4 exist and that are, as the status says, extraordinary and 5 temporary in nature. Temporary meaning not only necessary of 6 brief duration in time, although it can mean that, but also 7 meaning not permanent and not -- not necessarily durable. 8 Conditions that, in fact, can be reversed. But really that 9 prong needs to be read all together because those need to be 10 extraordinary and temporary conditions that prevent nationals 11 of that country from returning to the country in safety, which 12 means significant threat to life or health.</p> <p>13 Q And that section -- I would like you to also look at --</p> <p>14 THE COURT: Before you go on, let me ask you this 15 question, because it is obviously central to this case: 16 Obviously there are conditions in Haiti that were problematic 17 before the earthquake, correct?</p> <p>18 THE WITNESS: That's correct.</p> <p>19 THE COURT: So what is the interplay between the 20 conditions that occurred at the time of the earthquake and 21 after compared to the conditions that existed and had existed 22 in Haiti for many years? Help the Court by explaining how the 23 statute is supposed to work and how this designation is 24 supposed to work given the fact that this was not the 25 initiation of problems in Haiti. What was your understanding</p>	<p>1 as to the relationship? 2 Do you understand the question? 3 THE WITNESS: Yes, I do. 4 THE COURT: Okay. That is essentially what we are 5 trying to get to. So let's have some testimony about that. 6 THE WITNESS: Sure. Thank you, Your Honor. 7 THE COURT: Go ahead. 8 THE WITNESS: As I applied and interpreted this 9 statute in this particular prong as director, the 10 extraordinary and temporary conditions are a combination of 11 conditions that exist at the particular point in time when the 12 adjudication is occurring, which could be either the original 13 designation or the subsequent decision as to extension, 14 redesignation, or determination. 15 THE COURT: How does that relate -- 16 THE WITNESS: It's -- 17 THE COURT: How does that relate to the traditional 18 problems and challenges that Haiti was facing? Because one of 19 the issues that I have to resolve is whether or not the 20 definition of temporary protected status given the earthquake 21 was the deal with the immediate aftershock, no pun intended, 22 of the earthquake and what happened; or was it to deal with a 23 broader constellation of issues, many of which had occurred 24 prior to this earthquake? 25 So try to help the Court --</p>
<p style="text-align: right;">Page 251</p> <p>1 THE WITNESS: Yes. 2 THE COURT: -- as an expert with your understanding 3 as the administrator who was there. 4 Do you understand the question? 5 THE WITNESS: Yes. 6 THE COURT: Okay. Would you address that? 7 THE WITNESS: They necessarily incorporate 8 conditions that may have pre-existed the event that -- 9 THE COURT: That may have or did? 10 THE WITNESS: That did pre-exist. 11 THE COURT: Go ahead. 12 THE WITNESS: Did pre-exist. May have coexisted, 13 meaning in the case of an earthquake, conditions that were not 14 necessarily caused by the earthquake. And conditions that 15 subsequently existed, when you are talking about a decision 16 about extension or redesignation. 17 THE COURT: Such as the cholera that was supposedly 18 largely exacerbated and introduced by the U.N. troops; is that 19 a -- 20 THE WITNESS: That is the perfect example, 21 Your Honor. 22 THE COURT: Okay. 23 Okay. Let's go on. All right. There is no jury 24 here. We are trying to get the testimony from this expert. 25 MR. KURZBAN: Yes.</p>	<p style="text-align: right;">Page 252</p> <p>1 THE COURT: The Government is going to be able to 2 cross-examine. Let's focus on the issues that -- 3 MR. KURZBAN: Okay. Thank you. 4 THE COURT: Go ahead. 5 BY MR. KURZBAN: 6 Q In terms of the extraordinary and temporary conditions, 7 as the judge just mentioned, does that include conditions that 8 are untethered from the event that initiated the TPS 9 designation? 10 A Yes. And exactly the point I was trying to make to 11 the -- to the judge, that they could be conditions that, in 12 fact, occurred before or occurred long after whatever it was 13 that initially triggered the decision to designate a country 14 for temporary protected status under this prong. 15 Q Okay. And does it also include intervening factors? 16 A Absolutely, it could. And so one -- one great example of 17 that that's cited in my report is the recitation in one of the 18 Nicaragua TPS -- or the Nicaraguan TPS extension that I signed 19 where it talked in terms of a number of intervening climate 20 events, weather events, that, in fact, made the company -- or 21 I'm sorry, not company -- the country, Nicaragua in that case, 22 unable to reabsorb its nationals effectively. 23 Q Okay. And so let's take -- I believe you may be talking 24 about Salvador or one of the Central American countries in 25 this case?</p>

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<p>1 A Nicaragua in this case.</p> <p>2 Q Nicaragua?</p> <p>3 A Yes.</p> <p>4 Q How long has the TPS designation gone on in Nicaragua, do you know?</p> <p>5 A I -- I don't. It's -- I think it's over 15 years. I couldn't -- as I sit here, I couldn't tell you exactly how long it was.</p> <p>6 Q Okay. And the original -- the extension of Nicaragua's TPS was related to intervening events?</p> <p>7 A As time went on with Nicaragua, with El Salvador other intervening events became part of the analysis as to whether to extend TPS in those cases.</p> <p>8 Q And that was your understanding of how the statute should be designated with respect to --</p> <p>9 A That was and continues to be -- that was my understanding as director and continues to be my understanding of how the statute operates.</p> <p>10 Q Okay.</p> <p>11 MR. KURZBAN: Your Honor, I would like to move -- I don't know if it's necessary, but move Plaintiffs' Exhibit 1 into evidence.</p> <p>12 THE COURT: Is there any objection to Plaintiffs' 1?</p> <p>13 MR. MARUTOLLO: No, Your Honor.</p> <p>14 THE COURT: It is admitted.</p>	<p>1 (Plaintiff Exhibit 1, was received in evidence.)</p> <p>2 BY MR. KURZBAN:</p> <p>3 Q I would like to ask you, what is your understanding of the term "food insecurity"?</p> <p>4 A Food insecurity is defined as the condition with respect to a particular individual where that individual is not assured a supply of food adequate for the preservation of life and health.</p> <p>5 Q And why is that important as to whether or not people can return safely to the country?</p> <p>6 A Well, if the -- the -- the key issue is safety. If the individuals when they return won't have access to enough food to survive or to maintain any acceptable level of health, then that would clearly be a -- a threat to safety.</p> <p>7 Q All right. And I would like to ask you with respect to gender violence, do you understand what gender violence is in the context of TPS?</p> <p>8 A Yes. Gender violence can mean sexual assault. It can mean domestic assault, basically any gender-based violence, both the levels at which such violence occur and the ability of law enforcement authorities within a particular country to effectively address that violence and any other kind of violence, incidentally, is a very relevant factor for TPS consideration. And I want to underscore one that very well could post -- after coming to existence after whatever was the</p>
<p>1 event that initially gave rise to the TPS grant.</p> <p>2 Q Okay. And at the time you extended TPS or recommended an extension of TPS for Haitians, did you consider issues of food security and gender violence?</p> <p>3 A I considered a -- a broad range of issues, including food security, gender violence, stability of the Government, education, health care. I considered a broad range of considerations as is typical based on the information that's in that RAIO Country Conditions Report.</p> <p>4 Q With respect to crime rates of holders of TPS or their use of federal benefit, in your time as director did you ever consider the crime rates of TPS holders when making a recommendation regarding TPS?</p> <p>5 A Their crime rates? I'm assuming you're meaning their crime rates --</p> <p>6 Q General crime.</p> <p>7 A -- in the US?</p> <p>8 THE COURT: Don't talk over each other.</p> <p>9 Hang on. Put the question again.</p> <p>10 MR. KURZBAN: I'm sorry.</p> <p>11 THE COURT: Go ahead.</p> <p>12 Q In your time as director, did you ever consider crime rates in the United States of TPS holders as a factor to determine whether or not TPS should be extended or terminated?</p> <p>13 A No. In fact, by definition, you do not qualify to</p>	<p>1 receive TPS in the first place if you are a convicted criminal, either in the United States or in another country, if we have records that show that you were convicted in another country. And if you are convicted while you were on TPS, your TPS would ordinarily be suspended -- terminated, rather, based on that conviction.</p> <p>2 THE COURT: Let me ask you this hypothetical question: Suppose TPS protection was extended to Country X and 20,000 people from Country X come into the United States, and then five years later you look and 20,000 people have committed felonies and now you are trying to decide whether or not to extend the TPS. Would that have an impact on the thinking as to whether or not Country X should or should have an extension or redesignation of TPS, the fact that 100 percent -- this is a hypothetical question -- of the people that came in under TPS were convicted felons, would that have an impact or not in this hypothetical?</p> <p>3 THE WITNESS: In the hypothetical? In the hypothetical --</p> <p>4 THE COURT: I'm giving you a hypothetical.</p> <p>5 THE WITNESS: -- which I --</p> <p>6 THE COURT: In a pure hypothetical view as an expert -- as a testifying expert you get questions like this. Okay?</p> <p>7 Hypothetically, Country X five years later, all 100</p>